

EMMA SABSEVITZ

IBLA 77-525

Decided May 23, 1978

Appeal from decision of Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U-32341.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A Federal oil and gas lease reinstatement petition is properly denied where the petitioner avers merely that she mailed a rental check to the proper office of the Bureau of Land Management well before the anniversary date of the lease, and no evidence of this attempted payment, other than petitioner's statement, appears in the record.

APPEARANCES: James W. McDade, Esq., McDade & Lee, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Emma Sabsevitiz was the holder of Federal oil and gas lease U-32341 which terminated by operation of law when its anniversary date, April 1, 1977, passed without payment of the annual lease rental being received in the proper office of the Bureau of Land Management (BLM). See 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). Mrs. Sabsevitiz timely petitioned for the reinstatement of her lease under the provisions of 30 U.S.C. § 188(c) (1976) which allow for such reinstatement where payment of the rental is made within 20 days after the anniversary date and it is shown that the failure to pay on or before the anniversary was either justifiable or not due to a lack of reasonable diligence. By decision dated July 20, 1977, the Utah State Office, BLM, denied the petition for reinstatement. This appeal followed.

According to a sworn statement filed by Mrs. Sabsevitiz with BLM, she mailed a check in the amount of \$320, the full rental due on the subject lease, to the Utah State Office, on March 25, 1977. She

became concerned, however, when her husband, who had that same day mailed an oil and gas lease rental check to the Utah State Office, BLM, had received a receipt for his rental payment, and she did not receive a similar receipt. In a letter dated April 5, 1977, she brought these facts to the attention of the Utah State Office and inquired whether her check had, in fact, been received. By letter dated April 12, the State Office informed her that her check for the rental payment had not been received. Thereafter, through her attorneys, Mrs. Sabsevitz arranged delivery of a new rental check to BLM on April 20, 1977, 1/ and on the same date filed a petition for reinstatement of the lease.

The decision below, in denying the petition for reinstatement, states that "it was not explained why two payments, one from Mr. Sabsevitz and one from Mrs. Sabsevitz, were mailed on the same day in different envelopes." The decision goes on to say that, "the credibility of Mrs. Sabsevitz is not challenged, nor is the credibility of Mr. McDade. There has simply not been sufficient evidence submitted to demonstrate reasonable diligence."

[1] While we do not view the Sabsevitz' use of separate envelopes as a matter requiring any explanation, we agree that the evidence submitted by appellant is not sufficient to "demonstrate reasonable diligence." Corroborative evidence of some sort is properly required before reinstatement will be granted where the initial lease payment was never received by BLM, but was allegedly lost in the mail. A photocopy of appellant's check register accompanied by her bank statement for the period at issue might afford such corroboration, especially if appellant's personal checks are sequentially numbered by the printer. Such evidence has not, however, been submitted here, and we agree with the finding below that the requirements of 43 CFR 3108.2-1(c)(2) have not been met. The burden of proving that failure to pay advance rentals on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence is the obligation of the one who failed to make timely payment. M. J. Harvey, Jr., 19 IBLA 230 (1975). See Richard L. Triplett II, 32 IBLA 369 (1977); David W. Gregg, 32 IBLA 293 (1977).

---

1/ The rental check delivered April 20, 1977, was returned with no mention of the petition for reinstatement which had been separately filed the same date. Since the rental check and petition were received within the 20 day period contemplated by 30 U.S.C. § 188(c), supra, the Utah State Office was in error in its earlier refusal to pass on the merits of the petition for reconsideration. The issuance of the decision before us, however, renders this error moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Douglas E. Henriques  
Administrative Judge

We concur:

---

Martin Ritvo  
Administrative Judge

---

Frederick Fishman  
Administrative Judge

